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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

RACHEL GOSSETT as Co-Trustee, etc. et al., Petitioners and Respondents, v. CHRISTOPHER ADAM JACKSON as Co-Trustee, etc. et al., Objectors and Appellants.	E066836 (Super.Ct.No. MCP1300789) OPINION

APPEAL from the Superior Court of Riverside County. James A. Cox, Judge. Dismissed in part; affirmed in part.

Christopher Adam Jackson, in pro. per., for Objector and Appellant.

Chapter Kris Jackson, in pro. per., for Objector and Appellant.

The Grossman Law Firm, Scott M. Grossman; and Jeffrey Lewis, for Petitioners and Respondents Rachel Gossett and Jordan Beswick.

No appearance for Petitioners and Respondents Scott Gossett and Jacob Gossett.

The ongoing probate dispute that forms the basis of this appeal began over five years ago with the death of Sandra McCumber Jackson.[1] Sandra was survived by three children: Christopher Adam Jackson, Jordan Beswick,[2] and Rachel Gossett. Christopher petitioned the probate court to contest the validity of amendments Sandra made to The Jackson Family Trust (the trust) after her husband, Fredric Forbin Jackson, passed away. Jordan and Rachel (collectively, the siblings) then petitioned the probate court to challenge the validity of asset transfers Christopher made from the trust after Sandra passed away, including the transfer of a residential property to his former wife, Chapter Jackson (Chapter). Two of Sandra's grandchildren, Scott Gossett and Jacob Gossett (collectively, the grandchildren), also petitioned the probate court for a determination that an individual retirement account (IRA) designating them as beneficiaries is not an asset of the trust.

While the dispute continues in the trial court, Christopher and Chapter now appeal from the trial court's order granting summary adjudication in favor of the siblings, removing Christopher as co-trustee and concluding that the post-death asset transfers Christopher made to himself and then to Chapter were invalid. Christopher also appeals from an order granting summary adjudication in favor of the grandchildren, concluding

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[1] Because some of the parties have the same last name, we will refer to them by their first names in order to avoid confusion. No disrespect is intended.

[2] Michael Edward Jackson legally changed his name to Jordan Beswick. To avoid confusion, we refer to Jordan by his current legal name only, even though the trust documents refer to him by his former legal name. The parties do not dispute that Jordan and Michael are the same person.

that the IRA was a nonprobate asset.[3] Christopher and Chapter also appeal from the orders allowing their respective attorneys to withdraw. We affirm the order granting summary adjudication in favor of the siblings, dismiss the appeal from the order granting summary adjudication in favor of the grandchildren, and dismiss the appeals from the orders allowing Christopher's and Chapter's attorneys to withdraw.

BACKGROUND[4]

A. *The Trust*

Fredric and Sandra created the trust on January 7, 1999. The corpus of the trust was left to the settlors' three children—Christopher, Jordan, and Rachel—in equal shares, subject to the surviving settlor's power of appointment. Fredric died on November 29, 2001. Pursuant to the terms of the trust, Sandra then divided the trust into three sub-trusts—Trust A, Trust B, and Trust C—and funded each of the trusts.

On August 20, 2013, Sandra exercised her right under the trust to amend or revoke Trust A and named Rachel and Jordan as the exclusive beneficiaries and trustees to Trust A. Christopher was removed as co-trustee and beneficiary to Trust A. On October 5, 2013, Sandra once again amended the trust. The second amendment affirmed the changes made in the first amendment. Sandra then exercised the limited power of

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3 The grandchildren did not file a respondents' brief so we "decide the appeal on the record, the opening brief, and any oral argument by the appellant." (Cal. Rules of Court, rule 8.220(a)(2).)

4 These facts are taken from the amended separate statement of undisputed facts filed by the siblings in support of their motion and the exhibits supporting their motion, including the trust instruments and deeds purporting to transfer real property.

appointment granted to her for Trust B and disinherited Christopher while naming Rachel and Jordan as the sole beneficiaries in equal shares. The trust provided for disposition of the assets held in Trust C at the death of the surviving spouse to be handled in the same manner as Trust B, thus resulting in Christopher being disinherited from Trust C too. Christopher remained co-trustee of Trust B and Trust C. Sandra died on October 16, 2013.

B. *Christopher's Transfer of Trust Assets*

One week after Sandra's death, Christopher filed a petition in probate court challenging the validity of the amendments to the trust. At the time of Sandra's death, Trust B held fee simple title to the real property commonly known as 40932 Arron Court, Murrieta, California (Arron Court property). Two weeks later, on November 4, 2013, Christopher, acting as "first successor trustee of the [trust] dated January 7, 1999, Trust B", executed a grant deed purporting to convey the Arron Court property to himself "as his sole and separate property." The trust required the co-trustees to act concurrently with each other unless a co-trustee was unable or unwilling to serve. On November 25, 2013, Christopher executed a grant deed purporting to transfer the Arron Court property to "[Christopher] and [Chapter] as Community Property."[5] On December 9, 2013, Christopher signed and recorded a quitclaim deed purporting to transfer title of the Arron Court property to Chapter, "a married wom[a]n as her sole and separate property."

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5 The siblings allege in their first amended petition that on November 13, 2013, the court issued an order prohibiting all of the co-trustees from transferring trust assets. That order is not included in the record.

Chapter and Christopher were married at the time. During this same period of time, Christopher withdrew over $300,000 from two separate bank accounts held by Trust C.

C. *The Siblings' Amended Petition and Motion for Summary Judgment*[6]

On December 23, 2013, the siblings filed an amended petition in probate court under Probate Code sections 850 and 17200, seeking to remove Christopher as co-trustee, to determine title to the Arron Court property, to recover trust property, and to assess damages against Christopher. The siblings sought relief against both Christopher and Chapter.

On July 2, 2015, the siblings moved for summary judgment against Christopher and Chapter. While the motion was pending, on July 24, Christopher filed for Chapter 7 bankruptcy. Shortly thereafter, Christopher filed a notice of stay in the probate proceedings. The bankruptcy court lifted the stay for the siblings "to adjudicate the entirety of the Probate Action against all parties to a conclusion" effective November 13, 2015.

After the stay lifted, on November 13, 2015, Christopher requested a continuance of the hearing on the siblings' motion for summary judgment to March 2016. Chapter filed her opposition to the motion on November 18, 2015. The following month, in December 2015, the siblings filed an "amended notice of motion for summary judgment and motion for summary adjudication in the alternative," which was accompanied by a

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6 Chapter and Christopher do not challenge the substantive decisions made by the court in granting summary adjudication. Rather, they focus entirely on putative defects in the process resulting in those decisions. Our factual recounting therefore emphasizes the facts relevant to that process, including the dates of particular filings, as relevant.

declaration from their attorney authenticating the exhibits previously filed, and four amended separate statements.[7] (Capitalization omitted.) The siblings' reset the hearing to March 2016. In February 2016, the parties stipulated to continue the hearing to June 2016.

Then, in early March 2016, both Chapter's and Christopher's attorneys moved to withdraw as counsel, which Chapter and Christopher opposed. Both motions were granted. Though Chapter complained that the withdrawal would prejudice her in defending the siblings' motion for summary judgment, she did not request a further continuance of the hearing. At the hearing granting the motion of Christopher's attorney, the court indicated that it would be "willing to grant some reasonable extensions of time on things to allow [Christopher's] new attorneys to get involved." At a later hearing to assess the issue, the court determined that good cause existed to vacate the trial date and to continue the hearing on the siblings' motion for summary judgment for one month to July 15, 2016. The court advised Christopher that "there [would] be no further continuances."

Christopher, representing himself, filed an opposition to the siblings' motion on July 1, 2016. Chapter did not file a subsequent opposition. Neither Christopher nor Chapter attended the hearing on July 15.

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[7] There are four separate statements because the separate statements are split into distinct separate statements for summary judgment and summary adjudication as against both Christopher and Chapter.

The court denied the siblings' motion for summary judgment, and partially granted their motion for summary adjudication. The court concluded that factual issues remained about whether the amendments to the trust were the invalid result of undue influence exerted over Sandra. Assuming the amendments were invalid, the court concluded that Christopher acted in excess of his authority as co-trustee in transferring the Arron Court property to himself and in distributing over $300,000 from the bank accounts held by Trust C to himself. A constructive trust was imposed on the real and personal property invalidly distributed from the trust until the property's return to the interim trustee. Christopher was removed as co-trustee from the trust and surcharged $304,278.08 to be returned to the trust. Christopher and Chapter timely appealed.

D. *The Grandchildren's Petition and Motion for Summary Judgment*

In March 2014, the grandchildren petitioned the court for release of Sandra's IRA managed by Charles Schwab as a nonprobate asset under Probate Code section 5000 and for attorney fees under Probate Code section 5003. The IRA was set up by Sandra in August 2002. At that time, Christopher, Jordan, and Rachel were named as the primary beneficiaries with equal shares and the trust was named as the contingent beneficiary. Sandra signed and dated a new IRA beneficiary designation form in July 2013, naming Scott and Jacob as the only primary beneficiaries.

On April 14, 2016, the grandchildren moved for summary judgment on their petition, seeking determination that the IRA was a nonprobate asset and also seeking attorney fees from Christopher for claiming in bad faith to have an adverse interest in the property. The hearing was set for June 30. Christopher did not file an opposition to the

motion. The court granted the motion in part, determining that Scott and Jacob were the beneficiaries of the IRA and that it was to be distributed to them. The court denied the request for attorney fees without prejudice to the refiling of the request in a separate noticed motion.[8]

DISCUSSION

As a preliminary matter, we note that Chapter and Christopher have failed to comply with the California Rules of Court in the preparation of the briefs they submitted in these appeals. The opening briefs are replete with violations of the rules of court, including failure to cite the record for factual assertions, failure to support each point with legal argument, failure to state each point under a separate heading, and failure to use a minimum of 13-point font size. (See Cal. Rules of Court, rule 8.204(a)(1)(B)-(C), (b)(4).) With Christopher, these issues are compounded by his filing of a greatly

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[8] We note that the grandchildren also may have sought damages under Probate Code section 5003. However, the record is unclear on this point. Their petition contains a section entitled "Petitioners Are Entitled to Legal Costs and Attorneys [*sic*] Fees," and the petition concludes with a prayer for relief for "[a]n Order against [Christopher] for the cost of the action, including reasonable attorney's fees." In the section about attorney fees, the last paragraph includes a request for "attorney's fees and damages caused by the bad faith notice causing the IRA Accounts to be blocked." In the motion for summary judgment, the grandchildren were equally unclear as to whether they were seeking attorney fees *and* damages. Again, the request for damages is not included in a heading or in the conclusion, but the last sentence of the motion reads, "Respondent is liable for Petitioners' reasonable attorneys [*sic*] fees and damages." The court did not address the grandchildren's request for damages specifically in its order or at the hearing. Because the issue of damages appears to have remained, we refer to the order granting the grandchildren's motion as an order granting summary adjudication, not summary judgment, as the trial court referred to it.

oversized opening brief with a word count totaling over 40,000 words[9]—nearly three times the maximum allowable 14,000—without permission from the court. (See Cal. Rules of Court, rule 8.204(c)(1) [14,000 word maximum allowed], (c)(5) ["the presiding justice may permit a longer brief for good cause"].) Indeed, Christopher filed this brief even though *we denied his request to file an oversized brief*. In addition to the blatant disregard of this court's order, Christopher has expressly misrepresented the length of his opening brief by signing a certificate of compliance falsely claiming that the word count totals only 13,996 words. While it would be well within our discretion to strike both opening briefs for noncompliance with the rules and to order them refiled (Cal. Rules of Court, rule 8.204(e)(2)(B)), we refrain from doing so because the briefs were filed over one and one-half years ago and the siblings filed a respondents' brief addressing the merits of both appeals.

We will, however, strictly adhere to the rules of appellate practice and procedure and address only those issues properly raised by Christopher and Chapter. Our review is guided by the headings in the argument section of appellants' opening briefs. (See Cal. Rules of Court, rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.) There are some global issues in the opening briefs that have resulted in the forfeiture of arguments. First, 11 of the 12 argument sections in Chapter's opening brief are prefaced with a bolded paragraph incorporating by reference arguments she made below in her opposition to the siblings' motion. We disregard these

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9 This word count was calculated by a computer program used by the court.

arguments entirely. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 294, fn. 20.) Second, we disregard any legal arguments (and there are many) that are not clearly identified in a heading. (*Opdyk*, *supra*, at p. 1830, fn. 4.) Third, we do not address any arguments made for the first time in Christopher's reply brief (Chapter did not file one) because he has not demonstrated good cause for failing to raise them beforehand. (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.) Nor could good cause exist, given the extraordinary length of Christopher's opening brief.

A. *Appealability*

The siblings argue that the case should be dismissed because the order granting summary adjudication in their favor and the orders allowing Chapter's and Christopher's attorneys to withdraw are not appealable. We disagree in part and conclude that the order granting summary adjudication in favor of the siblings was appealable. The order granting summary adjudication in favor of the grandchildren, however, was not appealable, so we dismiss the appeal from that order.

1. *Orders Granting Summary Adjudication*

While orders granting summary adjudication ordinarily are not directly appealable (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court of San Francisco* (2003) 114 Cal.App.4th 309, 319) in a dispute over a trust, "the Probate Code provisions concerning appealability are exclusive" (*Kalenian v. Insen* (2014) 225 Cal.App.4th 569, 575; see also Code. Civ. Proc., § 904.1, subd. (a)(10) [appeal may be taken from any order made appealable by the Probate Code]). The appealability of probate disputes in general is

governed by Probate Code section 1300. In addition, Probate Code section 1304 lists appealable orders in trust proceedings. (*Kalenian v. Insen*, *supra*, at pp. 575-576.)

"[A] probate order's appealability is determined not from its form, but from its legal effect." (*Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 755.) "An order is appealable, even if not mentioned in the Probate Code as appealable, if it has the same effect as an order the Probate Code expressly makes appealable." (*Ibid.*; Ross & Cohen, Cal. Practice Guide: Probate (The Rutter Group 2018) ¶ 3.577, pp. 3-160 to 3-161 ["Thus, regardless of its form or label, a probate order is appealable if it has the same effect as an order expressly made appealable by the Probate Code."].) When a challenged order is the only judicial ruling regarding the matter, and "[n]othing remains for judicial consideration," and there is "no other avenue for appellate review," then such circumstances justify treating the order as an appealable final judgment. (*Estate of Miramontes-Najera*, *supra*, at p. 755.)

Among the orders expressly made appealable by the Probate Code are orders removing a fiduciary or trustee (§§ 1300, subd. (g), 1304, subd. (a), 17200, subd. (b)(10)), orders surcharging a fiduciary (§ 1300, subd. (g)), and orders adjudicating the merits of a claim under Probate Code section 850 (§ 1300, subd. (k).) The order removing Christopher as co-trustee and surcharging him was immediately appealable. (Prob. Code, §§ 1300, subd. (g), 1304, subd. (a), 17200, subd. (b)(10).)

In addition, the trial court conclusively resolved the siblings' claims under Probate Code section 850 that the Arron Court property and over $300,000 taken by Christopher from the trust bank accounts must be returned to the trust. While a determination of the

proper distribution of those assets remained pending determination of the validity of the trust amendments, the court conclusively determined that the real and personal property taken by Christopher and possessed by Chapter and Christopher belonged to the trust. (See Prob. Code, § 850, subd. (a)(3)(B) [trustees may petition for an order "[w]here the trustee has a claim to real or personal property, title to or possession of which is held by another"].) The order finally adjudicating the merits of those real and personal property claims therefore was immediately appealable. (Prob. Code, § 1300, subd. (k).)

On the other hand, the determination that an asset is a nonprobate asset under Probate Code section 5000 is not an order made appealable by the Probate Code. (See Prob. Code, §§ 1300, 1304.) In addition, an order granting summary adjudication or summary judgment is not appealable. (Code Civ. Proc., § 904.1; *Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 761, fn. 7.) Rather, the appeal must be taken from the judgment, not the order granting the motion. (Code Civ. Proc., § 437c, subd. (m)(1); *Saben, Earlix & Associates v. Fillet* (2005) 134 Cal.App.4th 1024, 1030.) It is not this court's practice to "save" an appeal from a nonappealable order by deeming it to be an appeal from a subsequent judgment. (*Shpiller v. Harry C's Redlands* (1993) 13 Cal.App.4th 1177, 1180.) For all of these reasons, we dismiss Christopher's appeal from the order granting summary adjudication in favor of the grandchildren.

We also decline Christopher's invitation to treat any improvidently taken appeal as a petition for writ of mandate. Although we have the discretion to treat an imperfect appeal as a petition for writ of mandate, that power should be exercised sparingly and only in unusual circumstances. (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429,

1434.) Christopher does not present any reason for us to exercise that power here. There is (or was) an adequate appellate remedy by way of an appeal from the final judgment. We therefore dismiss Christopher's appeal from the order granting the grandchildren summary adjudication.

2. *Attorneys' Motions to Withdraw*

The orders allowing Chapter's and Christopher's attorneys to withdraw also are not appealable. They are not listed among the orders made appealable under Probate Code sections 1300 and 1304. In general, when an order granting an attorney's motion to withdraw does not direct any payment of money or the performance of any act, the order is not appealable (*Messih v. Lee Drug, Inc.* (1985) 174 Cal.App.3d 312, 315 (*Messih*); see also *Conservatorship of Rich* (1996) 46 Cal.App.4th 1233, 1236 [order denying motion to substitute one attorney for another is not an appealable order]). The orders were reviewable "immediately only by way of a petition for extraordinary writ." (*Messih*, *supra*, at p. 315.) We decline to treat the appeals from the attorney withdrawal orders as petitions for extraordinary writ because Christopher and Chapter present no reason for us to do otherwise. (*Id*. at p. 315, fn. 4; *Estate of Weber* (1991) 229 Cal.App.3d 22, 25 ["A petition to treat a nonappealable order as a writ should only be granted under extraordinary circumstances, '"compelling enough to indicate the propriety of a petition for writ . . . in the first instance."'"].) We therefore dismiss the appeals of both Christopher and Chapter from the orders granting their attorneys' motions to be relieved as counsel.

B. *Personal Jurisdiction over Chapter*

Chapter contends that the court lacked personal jurisdiction over her because the siblings' first amended petition was improperly served on her at a post office box and not at the Arron Court property where she resided. Whether she was personally served is not relevant, because Chapter generally appeared in the action by moving to strike the first amended petition.[10] (Code Civ. Proc., § 1014.) "A general appearance by a party is equivalent to personal service of summons on such party." (Code Civ. Proc., § 410.50, subd. (a).) By filing a motion to strike, Chapter waived any objection to the court's exercise of personal jurisdiction over her.

C. *The July 2015 Motion and the December 2015 Amendments*

Christopher argues, in essence, that the trial court improperly granted summary adjudication on the siblings' amended motion filed in December 2015 while also relying on evidence submitted in support of their original motion filed in July 2015. In the same vein, Chapter argues that the trial court erred in considering the siblings' motion at all because of numerous defects that she contends were contained in the July motion and the supporting documentation and evidence. These arguments are based on a misunderstanding of the relationship between the July motion and the amendments filed in December.

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10 Though Chapter failed to include the motion to strike in the clerk's transcript, the reporter's transcript from the hearing at which she argued the merits of the motion has been provided. Moreover, in the recitation of the facts in her opening brief, she acknowledges without support that she filed a motion to strike on January 27, 2014.

In July 2015, the siblings filed a motion for summary judgment against Chapter and Christopher. In November, Chapter opposed the motion and objected to various procedural defects contained therein and in the supporting documentation, including the separate statement and the exhibits. In the order granting summary adjudication, the trial court explained that there had been "several procedural issues with the Motion for Summary Judgment which were pointed out by [Chapter's] Opposition. Petitioners *were given the opportunity to correct these deficiencies* as evidenced by the amended Notice and Separate Statements filed on 12/18/15." (Italics added.) Thus, it appears as though the December amendments were filed *at the invitation of the court.* Christopher claims *without any support* that the amendments were filed "without leave from the court" and "absent any stipulation between the parties." Although the record does not appear to contain the order from the court allowing these amendments (if included, the parties do not cite it), the trial court's explanation in the order granting summary adjudication demonstrates that the court invited the siblings to file amendments to correct procedural deficiencies in the July motion. The December amendments thus were intended to supplement the July motion and correct deficiencies in the previous filings.

Because the December 2015 amendments corrected many of the issues Chapter raised in her opposition to the July 2015 motion, we consider moot the challenges she brings about defects in the July motion. She argues that (1) the July separate statement did not comply with the rules of court (which the siblings concede); (2) the July separate statement and notice of motion sought relief in the form of summary judgment only, not summary adjudication; and (3) the exhibits were not properly authenticated. These

defects were all corrected by the December amendments. The siblings' attorney authenticated all 13 of the previously filed exhibits. The amended notice of motion and amended separate statements indicated that summary adjudication was being sought as an alternative form of relief. And the amended separate statements listed each cause of action separately and "[e]ach supporting material fact claimed to be without dispute with respect to the cause of action." (Cal. Rules of Court, rule 3.1350(d)(1)(B).) Chapter did not renew any of her objections after these corrections were made.

D. *Which Petition?*

Christopher and Chapter contend that the siblings failed to establish an entitlement to relief because the motion for summary judgment failed to identify "which petition" in the probate court was the subject of the motion. We conclude that Christopher waived this argument and that it lacks merit in any event.

In its order granting the siblings summary adjudication, the trial court indicated that "the amended Notice still does not identify what Petition [the siblings] are seeking Summary Judgment/Summary Adjudication of (their own First Amended Petition or [Christopher's] First Amended Petition). Despite this issue, based on the language in the Notice and Motion, *it appears that they are seeking Summary Judgment of their own Petition* and as such, this analysis focuses on Petitioners' First Amended Petition." (Italics added.)

"A basic tenet of motion practice is that the notice of motion must state the grounds for the order being sought (Code Civ. Proc., § 1010; Cal. Rules of Court, rule 3.1110(a)), and courts generally may consider only the grounds stated in the notice of

motion." (*Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277.) "The purpose of the notice requirements 'is to cause the moving party to "sufficiently define the issues for the information and attention of the adverse party and the court."'" (*Ibid.*) A defective notice is not fatal if the omitted ground for relief was included in the supporting papers or the ground for relief was raised without objection at the hearing on the motion. (*Ibid.*)

Christopher's opposition to the siblings' motion is entitled "Christopher Jackson's *opposition to motion for summary judgment on 1st amended sub miscellaneous petition of Rachel Gossett and Jordan Beswick*." (Capitalization omitted; italics added.) The opposition thus shows that Christopher understood that the siblings were seeking relief on their first amended petition, as the trial court inferred. Christopher cannot now argue that he was confused. (*Beyer v. Tahoe Sands Resort* (2005) 129 Cal.App.4th 1458, 1471 ["A party cannot change his theory of the case on appeal."].)

Because Chapter did not make the same concession below, we address her argument on this point. While the trial court correctly noted that neither the siblings' notice of motion filed in July 2015 nor the amended notice of motion filed in December 2015 expressly states which probate petition the motion is based on, it is abundantly clear from the supporting documentation that the motion is based on the siblings' first amended petition and not Christopher's. In the first paragraph within the "Summary of Argument" section in the supporting memorandum to the July 2015 motion, the first amended petition filed by the siblings is specifically referenced. By contrast, Christopher's first amended petition is not mentioned at all in the accompanying memorandum. In addition, the first statement in the supporting declaration from Rachel

and Jordan is: "I am *the petitioner* in this matter." (Italics added.) Needless to say, the siblings are "petitioners" for their petition only, not the one filed by Christopher wherein he is the petitioner and they are the respondents. The siblings' first amended petition is included among the documents supporting the motion, and Christopher's petition is not. Similarly, the separate statements cite to the siblings' first amended petition and not to Christopher's. Perhaps most important, the grounds for relief in the motion and the amended motion mirror those in the siblings' first amended petition.

Thus, although the original notice and amended notice did not expressly state that the motion was based on the siblings' first amended petition, we conclude that the trial court did not err in assuming that the siblings' first amended petition formed the basis of the siblings' motion. Chapter was provided sufficient notice that the siblings sought relief based on their first amended petition.

E. *Continuances*

Christopher contends that the trial court abused its discretion in failing to further continue the hearing on the siblings' motion for summary judgment. We disagree and conclude that the trial court acted well within its discretion in not further delaying the hearing.

Code of Civil Procedure section 437c, subdivision (h), "mandates a continuance of a summary judgment hearing upon a good faith showing by affidavit that additional time is needed to obtain facts essential to justify opposition to the motion." (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253-254.) A plaintiff who cannot make the showing required under section 437c, subdivision (h), of the Code of Civil Procedure

"may seek a continuance under the ordinary discretionary standard applied to requests for a continuance." (*Hamilton v. Orange County Sheriff's Dept.* (2017) 8 Cal.App.5th 759, 765.) "[I]n deciding whether to continue a summary judgment to permit additional discovery courts consider various factors, including (1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance motion could have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence sought is truly essential to the motion." (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 644.) In the absence of an affidavit mandating a continuance under section 437c, subdivision (h), of the Code of Civil Procedure, we review the trial court's decision to grant or deny a continuance for abuse of discretion. (*Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1428.)

Christopher did not file an affidavit in support of any request to continue the hearing on the siblings' motion for summary judgment and thus did not comply with the requirements of section 437c, subdivision (h) of the Code of Civil Procedure. A hearing to determine whether a further continuance was warranted was set by the court on its own motion after the court allowed Christopher's attorney to withdraw. At the hearing, Christopher argued that a continuance was needed because he was newly representing himself and he needed additional time to depose Rachel. The trial court dismissed the theory, noting, "Well, if you haven't taken it by now, then it's probably to[o] late, sir. I don't know that's—that's your problem. You should have taken it." Christopher did not

explain why the deposition had not yet been taken two and one-half years after the siblings filed their first amended petition. More crucially, Christopher did not indicate what facts Rachel might provide or how they might be essential. He thus failed to make any showing of good cause to justify a continuance. (See *Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 533 [denial of continuance reasonable where the "[p]laintiff simply failed to conduct any meaningful discovery during the more than three years that elapsed between the initiation of suit and the close of discovery"].)

Despite this inadequate showing, Christopher nevertheless *was granted* a one-month continuance after his attorney was relieved. At that point, the motion had been pending for over seven months, and the parties had already stipulated to a previous continuance after the bankruptcy stay was lifted. Given the totality of the circumstances presented here, a one-month continuance was sufficient to ensure that Christopher had a fair hearing.[11]

Christopher argues that the court should have granted a longer continuance because he had fewer than the statutorily required 80 days until the hearing. (See Code Civ. Proc., § 437c, subd. (a)(2) [notice of motion to be served 75 days before hearing with an additional five days for service by mail within California].) This argument has no merit. The siblings' original motion was served on July 2, 2015, and the amended motion was served by mail on Christopher's attorney in California on December 17,

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11 Chapter also contends that the trial court abused its discretion by not granting her a continuance under section 437c, subdivision (h) of the Code of Civil Procedure. As she concedes, however, she did not request a continuance. This argument is forfeited.

2015. Christopher does not cite any authority, nor are we aware of any, for the proposition that the 80-day requirement reset when Christopher began representing himself on April 7, 2016. Even if it had, however, Christopher's attorney was relieved 99 days before the July 15, 2016, hearing date.

We further reject Christopher's argument that the trial court abused its discretion by not continuing the hearing on the siblings' motion when it became apparent that Christopher could not attend because he was incarcerated.[12] The trial court was not aware that Christopher was incarcerated when it heard the siblings' motion on July 15, 2016. At that hearing, the siblings' attorney responded, "I don't think you're going to have anyone," when the court asked about additional appearances. Later in the hearing, the court stated, "I know he's not here. I've heard he's had some legal problems, so maybe that's why. I don't know why he's not here." Two weeks later, at the hearing on the grandchildren's motion, the court inquired about Christopher's whereabouts, and the siblings' attorney explained that Christopher was not in attendance because he had been arrested. The record does not contain any information about *when Christopher was arrested*, how long he was incarcerated, and, most importantly, why he did not contact the court from jail about his circumstances. Given Christopher's unexplained absence, the court acted within its authority in holding the hearing and in ruling on the siblings' motion. (Cal. Rules of Court, rule 3.1304(d).)

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12 We do not consider Christopher's assertions concerning facts outside the record, including those Christopher makes about his arrest and the alleged conduct of the siblings' attorney in relation to the arrest. We further do not consider Christopher's arguments about the court's obligation to disqualify the siblings' attorney.

In sum, we conclude that the trial court did not abuse its discretion by not further continuing the hearing on the siblings' motion for summary judgment.

F. *Consideration of All of Christopher's Relevant Evidence*

Christopher contends that the trial court failed to consider all of the relevant evidence he submitted in support of his opposition. This contention is false. The trial court in fact overruled all of the siblings' objections to Christopher's evidence even though it considered some of them to have merit. All of the evidence submitted by Christopher therefore *was considered*. Christopher cannot appeal from a decision in his favor. (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.)

G. *Request for Judicial Notice*

Chapter contends that the trial court erred by granting the siblings' request for judicial notice and by taking judicial notice of "the truthfulness of the contents of those documents." (Boldface and capitalization omitted.) This contention has no merit.

Of the 11 documents the court judicially noticed, seven are filings in the case and the remaining four are recorded documents for the Arron Court property. The court had authority to take judicial notice of all of these documents. (Evid. Code, § 452, subd. (d) [records of any court in the state can be judicially noticed]; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117 [a court may judicially notice a recorded deed].) Chapter does not point to any instance in which the court improperly considered the truthfulness of the matters contained in the documents. In fact, in granting the request, the court indicated that it could not judicially notice the truth of the matter asserted in those documents. There was no error.

H. *Declarations of Rachel and Jordan*

Chapter contends that the trial court erred by considering the declarations of the siblings because the siblings failed to show that they were competent to testify to the matters therein. While we agree with Chapter that the declarations of Rachel and Jordan did not properly demonstrate that they were based on their personal knowledge, we conclude that Chapter has not demonstrated that their admission amounted to prejudicial error.

Declarations submitted to support or oppose motions for summary judgment must be based on personal knowledge. (Code Civ. Proc., § 437c, subd. (d).) "Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations." (*Ibid.*)

Neither Rachel nor Jordan attested that their declarations were based upon their personal knowledge. The siblings contend that declarations presumptively are based on the personal knowledge of the declarant. We need not decide this issue because the declarations were not necessary to the court's decision. The only issues relevant to Chapter were (1) whether the Arron Court property belonged to Trust B at the time of Sandra's death, and (2) whether the transfer of the Arron Court property to Christopher after Sandra's death was proper. If the Arron Court property was an asset of the trust that was not properly transferred to Christopher, then the subsequent transfers of the property from Christopher to the marital estate and then to Chapter were not proper.

All of the siblings' undisputed material facts relating to the Arron Court property relied on evidence *in addition to* the siblings' declarations. Christopher did not materially dispute any of the facts relevant to the trust's ownership of the Arron Court property or his lack of authority to transfer the property after Sandra's death. Instead, to each undisputed material fact about the Arron Court property, he responded: "Fredric Forbin Jackson and Sandra McCumber Jackson created the Jackson Family Trust (hereinafter "trust") on January 7, 1999. There are Mutual Will's and Trust that left the shares to the Children equally. Showing the Settlor and Decedent intentions for forming the trust documents. Petitioners/Objectors Rachel, Jordan changed the trust documents by undue influence, manipulation, isolation, elder abuse, and there is no valid trust—no valid trust documents exist—The Decedent was the Trustee of the Trust and the beneficiary on Trust B, C and not her children according to IRS k1. Decedent pierce the veil of the trust on the IRS K1. The Trust must be set aside. A trust was created but the Petitioners Jordan & Rachel and Jacob and Scott " The Caregivers changed the trust with undue influence the unlawful acts piece the veil with elderly abuse, and financial Elderly Abuse and there is not a valid trust that was created due to the Trustees and Caregivers unlawful acts. The Decedent had a mental illness and was admitted into a mental health unit in 1988." (Errors in original.) Because Christopher did not dispute the fact that Trust B held fee simple title to the Arron Court property when Sandra died and that he conveyed the property to himself without paying any consideration for it, the trial court did not err in determining that "there [was] no question of fact under either the original [t]rust or the amendments to the [t]rust that [Christopher] did not have authority to

transfer title to the [Arron Court] property to himself." It necessarily follows that Christopher, who did not have proper title in the Arron Court property himself, did not then have authority to transfer title to the marital community or to Chapter, which is why the trial court cancelled the deeds purporting to accomplish those transfers. Thus, although the declarations of Rachel and Jordan did not demonstrate that they were based on personal knowledge, Chapter cannot demonstrate that any prejudicial error resulted from their admission.

I. *Due Process*

Christopher and Chapter complain that they were deprived of their right to due process because they did not have sufficient time after their attorneys withdrew to prepare their briefs in opposition to the siblings' motion and therefore were deprived of the opportunity to present every available defense as due process requires.[13] This argument lacks merit.

Due process requires that a party opposing a summary judgment motion "be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail." (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316.) Chapter and Christopher had ample opportunity to oppose the siblings' motion for summary judgment. The original motion was filed in July 2015, the amended notice and separate statements were filed in December 2015, and the hearing

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13 We disregard the contentions Christopher makes about alleged due process violations that amount to nothing more than conclusory statements supported by long string citations to cases with no bearing on the particular point.

was held on July 15, 2016. In general, one year is more than sufficient time for a party to respond to a motion for summary judgment. (See, e.g. Code Civ. Proc., § 437c, subd. (a)(2).) Chapter and Christopher had two and three months respectively after their attorneys withdrew to oppose the motion, which Christopher did. Neither Chapter nor Christopher points to *what specific defenses* they were deprived of making, what evidence they were not able to present, or how they were less than fully advised of the issues to be addressed or the facts they had to rebut. There was no denial of due process.

J. *Richard Jandt—Interim Trustee*

Christopher argues that the trial court abused its discretion by granting summary adjudication in favor of Jandt, the interim court-appointed trustee. The record on appeal, however, does not reflect that Jandt ever filed a motion for summary adjudication, let alone that the court ever granted such a motion. As far as we can determine on this record, the challenged order does not exist. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [appellant's failure to provide an adequate record on issue requires that the issue be resolved against appellant].)

DISPOSITION

We dismiss these appeals: (1) the appeal of Christopher from the April 7, 2016, order allowing his attorney to withdraw; (2) the appeal of Chapter from the May 13, 2016, order allowing her attorney to withdraw; and (3) the appeal of Christopher from the July 29, 2016, order granting summary adjudication in favor of Scott and Jacob. We affirm the July 15, 2016, order granting summary adjudication in favor of Rachel and Jordan.

Respondents Jordan and Rachel shall recover their costs of appeal from appellants Christopher and Chapter. Respondents Scott and Jacob shall recover their costs of appeal from Christopher. (Cal. Rules of Court, rule 8.278(a)(2).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MENETREZ
J.

We concur:

RAMIREZ
P. J.

MILLER
J.